

SEEKING RELIEF: SEC Reporting for Smaller Reporting Companies

DETAILS

The COVID-19 pandemic has triggered market volatility previously unseen by many companies. While certain industries were hit especially hard, a growing number of companies across the board are feeling the impact through a decline in market capitalization. Investors recognize that this decline has been significant for small and mid-size companies and we may not see full market recovery in the near future.

As the economic landscape continues to evolve, companies have an opportunity to seek relief from certain SEC filing and disclosure reporting requirements.

The SEC permits an issuer that meets certain criteria to take advantage of less onerous disclosure requirements in its Securities and Exchange Acts filings. The trigger that provides an issuer with this relief is determined by reference to the issuer's public float as of the last business day of the issuer's most recently completed second fiscal quarter.

Companies should be aware that the filing designation is subject to SEC review and comment.

SRC DESIGNATION

SEC Regulation S-K provides the detailed disclosure requirements (other than financial statement requirements which are provided under SEC Regulation S-X) applicable to filings under the Securities and Exchange Acts.

An issuer qualifies as an SRC if it has public float of less than \$250 million or it has less than \$100 million in annual revenues and public float of less than \$700 million (including no public float). Public float is measured as of the last business day of the issuer's most recently completed second fiscal quarter. Annual revenues refer to the most recently completely fiscal year for which audited statements are available.

COMPLIANCE WITH SECTION 404(B) OF THE SARBANES-OXLEY ACT (“SOX 404(B)”)

Along with the recent SRC amendment, only issuers qualifying as SRCs with annual revenue greater than \$100 million are required to provide an auditor’s attestation of management’s assessment of internal control over financial reporting under SOX 404(b). Furthermore, entities that qualified as emerging growth companies under the Jumpstart Our Business Startups (“JOBS”) Act of 2012 and were exempt from SOX 404(b) for up to five years after going public may still benefit from the exemption if they have not reached \$100 million in revenue.

TRANSITION FROM SRC TO REGULAR FILER

Once an issuer no longer qualifies as an SRC, measured as of the end of its most recently completed second fiscal quarter, the scaled disclosures are permitted through the issuer’s next annual report on Form 10-K. Note, however, that the filing deadline for the Form 10-K is based on the issuer’s filing status as of the end of the fiscal year covered by the Form 10-K.

The more significant scaled disclosure requirements for SRC issuers are presented below.

SCALED DISCLOSURE REQUIREMENTS – REGULATION S-K

ITEM	DESCRIPTION	SCALED REQUIREMENT
101	Description of business	Three years as opposed to five years
201	Market price of and dividends on registrant’s common equity and related stockholder matters	Stock performance graph is not required
301/302	Selected financial data Supplementary financial information	Not required
303	Management’s discussion and analysis (MD&A) of financial condition and results of operations	Two-year MD&A comparison as opposed to three years, Contractual obligations table is not required
305	Quantitative and qualitative disclosures about market risk	Not required
402	Executive compensation	Compensation discussion and analysis (CD&A) is not required
404	Transactions with related persons, promoters, and certain control persons	Disclosure of related party transactions exceeding lesser of \$120,000 or 1% of total assets at end of last two completed fiscal years (expanded disclosure requirement compared to general requirement)
407	Corporate governance	Compensation Committee Reports are not required
503	Prospectus summary	Ratio of earnings to fixed charges is not required
504	Use of proceeds	Not required if related pro forma information is not presented
601	Exhibits	Statement Regarding Computation of Ratios exhibit is not required

SCALED DISCLOSURE REQUIREMENTS – REGULATION S-X

ITEM	DESCRIPTION	SCALED REQUIREMENT
8-02	Annual Financial Statements	Two years of income statements, statements of cash flows and changes in stockholders' equity statements in lieu of three years
8-03	Interim Financial Statements	Certain historical data is permitted for equity investees
8-04	Financial Statements of Business Acquired or to Be Acquired	Maximum of two years of acquiree financial statements as opposed to three years
8-05	Pro Forma Financial Information	Fewer instances where pro forma financial statements are required

The chart above does not highlight the most recently issued amendments or current proposed amendments by the SEC to the S-K disclosure requirements as part of the SEC's effort to simplify and modernize disclosure requirements, many of which impact all issuers, regardless of filing status.

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